IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 5.8.2005.

CORAM

THE HON'BLE MR.JUSTICE AR.RAMALINGAM

C.R.P.(NPD)No.572 of 2003

Dharman Petitioner/Defendant

vs.

Chinnathambi Respondent/Plaintiff

Civil Revision Petition against the decretal order dated 18.2.2003 in C.M.A.No.9 of 2002 passed by the Principal District Judge, Tiruvannamalai confirming the decretal order dated 2.7.2002 in R.E.P.No.215 of 2001 in O.S.No.35 of 1993 on the file of the Principal District Munsif, Tiruvannamalai.

For petitioner : Mr.R.Karthikeyan

For respondent : Mr.V.Raghavachari

ORDER

The petitioner viz., Dharman being unsuccessful defendant/judgment debtor in C.M.A.No.9 of 2002 on the file of the Principal District Judge, Tiruvannamalai filed against the order in R.E.P.No.215 of 2001 in O.S.No.35 of 1993 on the file of the Principal District Munsif Tiruvannamalai has filed this revision.

2. The brief facts leading to this revision are as follows:-

The respondent in this revision petition viz., Chinnathambi filed a suit in O.S.No.35 of 1993 on the file of the District Munsif, Tiruvannamalai for recovery of money to the tune of Rs.4431/= against Dharman and obtained decree. He filed R.E.P.No.215 of 2001 with the prayer for attaching the house belonging to the said Dharman covered by natham Survey No.56/12C with the extent of 137 sq.metres and for sale of the same through court. The said R.E.P. was contested by the said Dharman by filing counter to the effect that he is 75 years old and he is an agricultural coolie in the village and the house is lying on a poramboke land and the said house is used for storing agricultural implements and thereby such house is exempted from

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attachment in execution of decree. Further, the similar attempt made by one Venkatakrishna Reddiar for the purpose of making attachment before judgment by filing O.S.No.319 of 1988 on the file of the District Munsif, Tiruvannamalai was not accepted on the basis of protest made by the said Dharman and consequently, attachment was raised based upon the fact that the said house is exempted from attachment under section 60 CPC.

3. However, the District Munsif, Tiruvannamalai has chosen to reject the claim of exemption made by the judgment debtor Dharman under section 60 CPC by stating that the judgment debtor Dharman has not proved that he is an agriculturist and the earlier claim of exemption of Dharman under section 60 CPC accepted by the District Munsif in O.S.No.319 of 1988 as well as by the appellate court in C.M.A.No.8 of 1989 cannot be binding upon the decree holder Chinnathambi since he was not a party to that O.S.No.319 of 1988 and C.M.A.No.8 of 1989 and thereby in all, ordered further proceeding of the execution petition. The judgment debtor Dharman also preferred C.M.A.No.9 of 2002 and the District Judge, Tiruvannamalai also dismissed the C.M.A. by holding that there cannot be any claim for exemption under section 60 CPC.

4. Aggrieved against such order of the District Judge, the judgment debtor Dharman has chosen to file this revision by raising grounds to the effect that both the courts below have not properly understood and considered the question of exemption claimed by the revision petitioner Dharman under section 60(1)(c) CPC and on erroneous and perverse view only both the courts have rejected the claim of exemption made by the judgment debtor Dharman and consequently, the revision has to be allowed by this court by setting right the correct position in this respect.

5. Arguments of the learned counsels appearing for the revision petitioner/judgment debtor as well as the respondent/decree holder were heard in detail in the light of material records available and the orders passed by both the courts below.

6. Section 60(1)(c) CPC reads as follows:-

> "houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist or a labourer or a domestic servant and occupied by him;"

Explanation V under this section is as follows:-

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> "For the purposes of this proviso, the expression 'agriculturist' means a person who cultivates land personally and who depends for his livelihood mainly on the income from agricultural land, whether as owner, tenant, partner or agricultural labourer."

Explanation VI under this section is as follows:-

> "For the purposes of Explanation V, an agriculturist shall be deemed to cultivate land personally, if he cultivates land--
>
> a) by his own labour, or
> b) by the labour of any member of his family, or
>
> c) by servants or labourers on wages payable in cash or in kind (not being as a share of the produce), or both."

The language of the above observed provisions clearly goes to show that the revision petitioner/judgment debtor is certainly entitled to get or avail the statutory exemption or benefit available for the person having the status of an agriculturist owning and occupying a house with agricultural apparatus as owner or tenant or partner or agricultural labourer.

7. In this case, the revision petitioner has not only filed counter in the main R.E.P. before the District Munsif Court that he is an agricultural coolie owning and occupying the house sought for to be attached with storage of agricultural apparatus like "மண்வெட்டி, கடப்பாரை, கோடாரி, அரிவாள்" etc., but also given evidence as RW1 before the said Executing Court stating that he is an agricultural coolie and thereby entitled to get exemption provided under section 60(1)(c) CPC and thereby his house cannot be attached in execution of the decree by Chinnathambi. Both the courts below have failed to take note of such a claim made by the judgment debtor Dharman in the counter as well as evidence for consideration and instead they have misconceived the provision of law as if the judgment debtor ought to have proved his status as agriculturist and using the house for storing agricultural apparatus. In other words, when the statutory exemption has been given under section 60(1)(c) CPC in favour of the agriculturist or even agricultural labourer, it is for the decree holder, on the other hand, to show that the judgment debtor Dharman is not entitled to claim statutory exemption by furnishing such materials in a way to reject the claim of exemption by the judgment debtor. That is why the earlier proceeding which shows

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the acceptance of exemption against the attachment before judgment by one Venkatakrishna Reddiar has not been taken note of by the courts below.

8. Therefore, I am of the view that this revision petition is a fit one to be allowed for the purpose of setting right the illegal and perverse orders of both the courts below. Accordingly, the civil revision petition is allowed and the orders of both the courts below are set aside. No costs.

ssk.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
1. The Principal District Judge,
   Tiruvannamalai.

2. The Principal District Munsif,
   Tiruvannamalai.

3. The Record Keeper,
   V.R.Section, High Court,
   Madras-104.

AVA(C.O)
BG/10.08.2005.

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